

HOWISON & ARNOTT, L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW
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SEP 14 2005

Austin Office:

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September 14, 2005

CONFIRMATION SENT VIA FIRST CLASS MAIL

YES ___ NO X___NUMBER OF PAGES TO FOLLOW 21**FACSIMILE COVER SHEET**

DATE: September 14, 2005

TO: Andrew J. Fischer (3627)

COMPANY: U. S. Patent and Trademark Office

FAX NUMBER: Centralized fax number: (571) 273-8300

FROM: Howison & Arnott, L.L.P. (Gregory Howison)

SERIAL NO.: 09/597,131

OUR FILE : PHL-25,357

ATTACHED: Transmittal (2); Copy of Auto-Reply dated 9/8/05; Copy of Transmittal originally filed 9/8/05 (1); Copy Fee Trans originally filed 9/8/05 (1); Copy of Pet. Extension originally filed 9/8/05(1); Copy of Amd after Final originally filed 9/8/05 (13); Copy of RCE originally filed 9/8/05 (1); Copy Credit Card Form fees paid on 9/8/05(1);

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COMMENT:

PHLY-25,357

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jeffrey Jovan Philyaw

Serial No.: 09/597,131

Filed: June 20, 2000

Group: 3627

Examiner: Andrew J. Fischer

For: PORTABLE SCANNER FOR ENABLING AUTOMATIC COMMERCE
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SEP 14 2005

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Gregory M. Howison

(Name of Person Mailing Document)

(Signature)

9/14/05
(Date of Signature)TRANSMITTAL

On September 12, 2005, a Notice of Abandonment was issued for the above-referenced patent application. A Notice of Appeal was filed on February 8, 2005. The Communication Re: Appeal indicates that the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.36(a) has expired.

Applicant respectfully requests the withdrawal of the Notice of Abandonment issued on September 12, 2005. Please be advised that Applicant filed the following documents on September 8, 2005 (copies enclosed):

Response to Notice of Abandonment
S/N 09/597,131
Atty. Dkt. No. PHLY-25,357

USPTO
TO: Auto-reply fax to 972 479 0464
9/14/2005 5:47 PM PAGE 1/001 Fax Server
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Auto-Reply Facsimile Transmission



TO: Fax Sender at 972 479 0464
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Received
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Page
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SENT BY: HOWISON, & ARNO; 972 479 0464 ; SEP-8-05 4:51PM; PAGE 1

HOWISON & ARNOTT, L.L.P.
A LIMITED LIABILITY PARTNERSHIP INCORPORATED IN TEXAS

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September 8, 2005

CONFIRMATION SENT VIA FIRST CLASS MAIL
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NUMBER OF PAGES TO FOLLOW 18

FACSIMILE COVER SHEET

DATE: September 8, 2005
TO: Andrew J. Fischer (3637)
COMPANY: U. S. Patent and Trademark Office
FAX NUMBER: Centralized fax number: (571) 273-8300
FROM: Howison & Arnott, L.L.P. (Gregory Howison)
SERIAL NO.: 69/397,131
OUR FILE: PRLY-23,357
ATTACHED: Transmittal (1); Fee Trans (1); Fee Extension (1); RCE (1);
Credit Card Form (1); Amendment (3)

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COMMENT:

PAGE 1/18 * RCV AT 09/14/2005 12:11:41 PM [Eastern Daylight Time] * SVR:USPTO-EFAX-6/31 * DNIS:2738300 * CSID:972 479 0464 * DURATION (mm-ss):08-08

PTO/SB/21 (09-04)

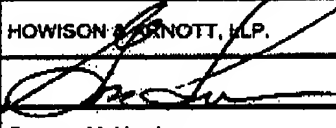
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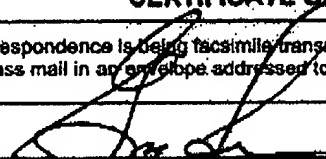
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/587,131	RECEIVED CENTRAL FAX CENTER SEP 14 2005
	Filing Date	June 20, 2000	
	First Named Inventor	Philyaw	
	Art Unit	3627	
	Examiner Name	Andrew J. Fischer	
Total Number of Pages in This Submission	Attorney Docket Number	PHLY-25.357	

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): RCE, credit card form
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	HOWISON & ARNOTT, LLP.		
Signature			
Printed name	Gregory M. Howison		
Date	9/7/05	Reg. No.	30,646

CERTIFICATE OF TRANSMISSION/MAILING	
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Signature	
Typed or printed name	Gregory M. Howison
Date	9/8/05

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4618).

FEE TRANSMITTAL
For FY 2005☒ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 1,475.00**Complete if Known**

Application Number	09/597,131
Filing Date	June 20, 2000
First Named Inventor	Philyaw
Examiner Name	Andrew J. Fischer
Art Unit	3627
Attorney Docket No.	PHLY-25,357

METHOD OF PAYMENT (check all that apply)☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):☒ Deposit Account Deposit Account Number: 20-0780/PHLY-25,357 Deposit Account Name: HOWISON & ARNOTT, L.L.P.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
- 20 or HP =	x	=
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP =	x	=
HP = highest number of independent claims paid for, if greater than 3.		
	Multiple Dependent Claims	Fee (\$)
	Fee (\$)	Fee Paid (\$)

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): RCE and Extension of Time

\$1,475.00

SUBMITTED BY

Signature	Registration No. 30,848	Telephone 972-680-8050
Name (Print/Type) Gregory M. Howison	(Attorney/Agent)	Date 9/18/05

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2005 <small>(Fees pursuant to the Consolidated Appropriations Act, 2003 (H.R. 4818).)</small>		Docket Number (Optional) PHLY-25,357	RECEIVED CENTRAL FAX CENTER
Application Number 09/597,131		Filed June 20, 2000	
For Portable Scanner for Enabling Automatic Commerce Transactions			
Art Unit 3627		Examiner Andrew J. Fischer	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

	Fee	Small Entity Fee	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1020	\$510	\$ _____
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1590	\$795	\$ _____
<input checked="" type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2160	\$1080	\$ <u>1,080.00</u>

☒ Applicant claims small-entity status. See 37 CFR 1.27.

☐ A check in the amount of the fee is enclosed.

☒ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 20-0780/PHLY-25,357 I have enclosed a duplicate copy of this sheet.

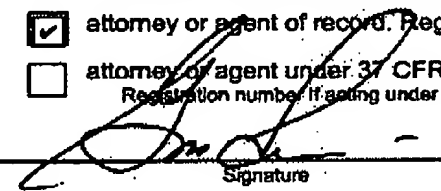
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I am the ☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

☒ attorney or agent of record. Registration Number 30,646

☐ attorney or agent under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



 Gregory M. Howison
 Signature

9/18/05

 Date

 972-680-6050
 Telephone Number

 Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of ONE forms are submitted.

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PHLY-25,357

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jeffrey Jovan Philyaw

Serial No.: 09/597,131

Filed: June 20, 2000

Group: 3627

Examiner: Andrew J. Fischer

For: PORTABLE SCANNER FOR ENABLING AUTOMATIC COMMERCE
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9/18/05
(Date of Deposit)

Gregory M. Howison

(Name of Person Mailing Document)

(Signature)

9/18/05
(Date of Signature)**AMENDMENT AFTER FINAL REJECTION**

In response to the Office Action dated September 8, 2004, please amend the above-referenced patent application as follows:

Amendments to the Claims are reflected in the listing of claims beginning on page 2 of this paper.

Remarks/Arguments being on page 7 of this paper.

AMENDMENT AND RESPONSE
S/N 09/597,131
Atty. Dkt. No. PHLY-25,357

In the Claims

This listing of claims will replace all prior versions, and listings, of claims in the application:

1. (Currently Amended): A method for initiating and completing a commercial transaction to allow a user to acquire an article of commerce having associated therewith a machine resolvable code (MRC), the MRC having encoded therein information relating to the article of commerce, comprising the steps of:

5 extracting the encoded information from the MRC with an extraction device, which step of extracting initiates a commercial transaction;

storing the encoded information from the MRC in a temporary buffer;

associating with the step of extracting unique identification information associated with the user that allows a retail processing system to uniquely identify the user; and

10 after the step of extracting and storing;

transferring from the extracting device to the retail processing system the extracted encoded information from the MRC and the unique identification information associated with the step of extracting; and

15 in response to the step of extracting, the step of transferring from the extraction device and the retail processing system receiving from the extraction device the encoded information from the MRC and the transferred unique identification information, transferring ownership of the article of commerce to the user to complete the transaction.

2. (Original): The method of Claim 1, wherein the step of extracting the encoded information from the MRC comprises the step of scanning the MRC with a scanner.

3. (Previously Presented): The method of Claim 1, wherein the step of extracting the encoded information from the MRC comprises the step of scanning a bar code.

AMENDMENT AND RESPONSE

S/N 09/597,131

Atty. Dkt. No. PHL-25,357

4. (Previously Presented): The method of Claim 3, wherein the step of scanning a bar code comprises the step of scanning a universal product code (UPC).

5. (Original): The method of Claim 1, and further comprising the step of providing a personal scanner having a memory associated therewith to the user, the step of extracting comprising the step of scanning the MRC with the personal scanner and the step of storing comprising storing the encoded information from the scanned MRC in the memory.

6. (Original): The method of Claim 5, wherein the personal scanner has associated therewith a unique ID and the step of transferring comprises the step of transferring to the retail processing system the entire encoded information from the MRC and the unique ID, wherein the unique ID is associated with the user at the retail processing system as the unique identification information.

7. (Previously Presented): The method of Claim 6, wherein the personal scanner is a wireless scanner, and the step of transferring comprises the step of wirelessly transmitting to the retail processing system both the extracted encoded information from the MRC and the unique ID.

8. (Previously Presented): The method of Claim 6, wherein the retail processing system is operable, upon receipt of the unique ID and the extracted information from the MRC, to perform the steps of:

extracting from a lookup table user information about the user that is associated with the unique user ID, which association is created prior to the step of providing the personal scanner to the user; and

completing the commercial transaction by transferring ownership of the article of commerce to the user associated with the user information.

AMENDMENT AND RESPONSE
S/N 09/597,131
Atty. Dkt. No. PHL-25,357

9. (Original): The method of Claim 6, and further comprising the step of:
creating a database at the retail processing system of a user of the personal scanner such
that the user is associated with the unique ID at the retail processing system prior to providing
a personal scanner to the user.

10. (Original): The method of Claim 5, wherein the step of transferring occurs after
the step of scanning the MRC.

11. (Previously Presented): The method of Claim 5, wherein the step of transferring
occurs after multiple ones of the MRCs have been stored in association with multiple articles
of commerce, and wherein the step of transferring ownership of the article of commerce to the
user comprises the step of transferring ownership of all of the articles of commerce to the user.

12. (Currently Amended): A system for initiating and completing a commercial
transaction to allow a user to acquire an article of commerce, comprising:

a machine resolvable code (MRC) associated with the article of commerce, said
MRC having encoded therein information relating to the article of commerce;

5 an extraction ~~circuit device~~ device for extracting said encoded information from
said MRC which said extraction ~~circuit device~~ device by the operation of extracting initiates a
commercial transaction;

a temporary buffer for storing said encoded information from said MRC;

10 an identification device for associating unique identification information
associated with the user with the extraction operation of said extraction ~~circuit device~~ device ;

a retail processing system operable to receive said extracted encoded information
from said MRC and said unique identification information, after said encoded information is
extracted and stored;

15 means for transferring from said extraction device said extracted encoded
information from said MRC and said unique identification information to said retail processing

AMENDMENT AND RESPONSE

S/N 09/597,131

Atty. Dkt. No. PHL-25,357

system in response to the operation of said extraction circuit extracting after the extraction of
said encoded information from said MRC by said extraction device; and

wherein, in response to said retail processing system receiving from said
extraction device said encoded information from said MRC and said transferred unique
20 identification information, ownership of the article of commerce is transferred to the user to
complete said commercial transaction, such that the operation of extracting performed by said
extracting circuit device is operable to cause transfer of said extracted encoded information
from said MRC and said unique identification information to said retail processing system and
said retail processing system completing said commercial transaction.

13. (Currently Amended): The system of Claim 12, wherein said extraction circuit
device comprises a scanner and said encoded information is extracted from said MRC by
scanning said MRC with said scanner.

14. (Original): The system of Claim 12, wherein said MRC is a bar code.

15. (Original): The system of Claim 14, wherein said bar code comprises a universal
product code (UPC).

16. (Currently Amended): The system of Claim 12, and further comprising a personal
scanner that comprises in part said extraction circuit device and said personal scanner includes
a memory associated therewith that comprises in part said temporary buffer, which said personal
scanner is transferrable to a user wherein said MRC is scanned with said personal scanner and
5 said encoded information from said scanned MRC is stored in said memory.

17. (Previously Presented): The system of Claim 16, wherein said personal scanner
has associated therewith a unique ID, and which said unique ID is transferred to said retail
processing system by said means for transferring with said entire encoded information from said

AMENDMENT AND RESPONSE
S/N 09/597,131
Atty. Dkt. No. PHLY-25,357

5 MRC, and wherein said unique ID is associated with said user at said retail processing system as said unique identification information.

18. (Previously Presented): The system of Claim 17, wherein said personal scanner is a wireless scanner and includes said means for transferring as a part thereof such that both said extracted encoded information from said MRC and said unique ID are wirelessly transmitted to said retail processing system.

5 19. (Original): The system of Claim 17, wherein said retail processing system is operable, upon receipt of said unique ID and said extracted information from said MRC, to extract from a lookup table user information about said user, said user information associated with said unique user ID, which association is created prior to said personal scanner being provided to said user, and then completing the commercial transaction by transferring ownership of the article of commerce to said user associated with said user information.

20. (Previously Presented): The system of Claim 17, wherein said retail processing system further comprises a database having a record of said user of said personal scanner such that said user is associated with said unique scanner ID at said retail processing system prior to providing said personal scanner to said user.

21. (Previously Presented): The system of Claim 16, wherein said extracted encoded information from said MRC and said unique identification information are transferred after said MRC is scanned.

5 22. (Previously Presented): The system of Claim 16, wherein said extracted encoded information from said respective MRCs and said unique identification information are transferred after multiple ones of said MRCs have been stored in association with multiple articles of commerce, and wherein when ownership in one article of commerce is transferred to said user, ownership of all of the articles of commerce are transferred to said user.

AMENDMENT AND RESPONSE
S/N 09/597,131
Atty. Dkt. No. PHL Y-25,357

7

REMARKS

Applicant has carefully reviewed the Office Action dated September 8, 2004. Claims 1-22 are pending in this application. Applicant has amended Claims 1, 12, 13 and 16 to more clearly point out the present inventive concept. Reconsideration and favorable action is respectfully requested.

Claims 1-22 have been objected to for failing to provide proper antecedent basis for the claimed subject matter. The Examiner has specifically pointed out the terms "means for transferring said extracted encoded information from said MRC"

Claims 1-22 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite because for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The claims have been amended to further clarify this aspect.

The Examiner has specifically pointed out that Applicant has not clearly linked and associated any corresponding structure with the claimed "means for transferring said extracted encoded information from said MRC" This language requires that the function associated with the means plus function language of this section claim is to transfer from the extraction device two items, the extracted encoded information and the unique identification information to a retail processing system. This is described with respect to Figs. 25, 26 and the flow charts of Figs. 27 and 28. The MRC code is extracted by the scanner 2500 which is operable to scan the MRC of an article of commerce. The operation of extracting the information is disclosed with respect to the block 2706 of flow chart 27. Block 2714 indicates the transmission of this information to the point of sale terminal, i.e., the retail processing system. The functionality requires a wireless link between a portable scanner that stores the information and the operation of this is described beginning on page 45, line 12 with the description of Fig. 25. It is set forth on page 46, line 5 that, when the user has completed the selection process, the user then "transmits" the MRC data 2504 of the purchased article by "pressing" a transmit button. This

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data is then transmitted over a wireless link to the receiver 2508 connected to the PC. Therefore, the function is to transmit the information extracted by the extraction device to a receiver and this is facilitated through the use of a wireless transmitter that has associated therewith a scanner. Further, the unique ID is the ID that is associated with the transmitted data and that is what is transmitted to the receiver. Thus, Applicant believes that this functionality is a functionality that is being requested by the Examiner.

Claims 1 and 12 were noted by the Examiner as being somewhat unclear with respect to the term "with the extraction operation of said extraction circuit" and what it modifies. This language has been altered in Claim 12 with an amendment and this is believed to provide sufficient clarification to the claim. However, this language does not appear in Claim 1 and, as such, no amendment to Claim 1 was made in response thereto.

In view of the above, Applicant respectfully requests the withdrawal of the 35 U.S.C. §112 rejection with respect to Claims 1-22.

Claims 12-22 stand rejected under 35 U.S.C. §102(e) as being anticipated by *Ogasawara*. This rejection is respectfully traversed with respect to the amended claims.

Applicant has described the operation of *Ogasawara* in prior responses. However, the Examiner has indicated that all of the elements are illustrated in *Ogasawara*. The Examiner specifically stated that the "ownership of the article is transferred after receiving encoded information (and payment), but the Examiner did not specifically point to any specific language in *Ogasawara* for the payment provision in response to the information transferred "from the extraction device" to the POS. Applicant believes that this is a key aspect that is missing from *Ogasawara*. *Ogasawara* is nothing more than a portable scanner that is utilized to keep a history of lists and location information for the purpose of providing information to a user. However, the *Ogasawara* reference is a reference that provides a local terminal for the purpose of allowing a customer to scan a bar code, transmit this information to a store's central computer and then

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retrieve information about that item's location. Further, a customer's shopping list can be input to the system and then the system organized to choose the closest item such that the shopping experience of the user is more comfortable and more efficient. This shopping list can be stored on a customer's ID card (which was previously stored thereon at a customer's home computer) and then input to the mobile terminal, which is then transmitted to the store's central computer over the wireless link. Further, the shopping list could be uploaded to the Internet to the store's web site to an interconnection and then downloaded from the web site to the local terminal. Further, the optical scanner can read the handwritten shopping list. Thus, this mobile terminal is utilized to provide information to the user and not to facilitate the completion of a transaction. Claim 1 and Claim 12 both require that encoded information from MRCs be extracted and stored in a temporary buffer in conjunction with a mobile ID number. When this MRC and the unique identification information are downloaded to the retail processing system "from the extraction device," the commercial transaction is completed and ownership of the article of commerce is transferred to the user to complete the transaction. The *Ogasawara* reference does provide for the scanning of an MRC and Applicant would not argue that there must be some type of temporary storage of the MRC before transfer therefrom. From the standpoint of unique information, the description in Col. 10, beginning at line 25 in the associated paragraph indicates that a unique customer ID can be stored on the terminal, it being noted that this is different than a unique terminal ID. This is unique information that uniquely identifies the user to the central core system. However, there is no disclosure in *Ogasawara* that suggests or discloses that, in response to the step of extracting the MRC information, the step of transferring the MRC information "from the extraction device" to the retail processing system and the step of receiving the transferred MRC information at the receiving system "from the extraction device" in association with the transfer of unique identification information will in any way result in transfer of ownership of the article of commerce to the user to complete the transaction. Although there is some indication that purchase history is maintained, there is no disclosure as to how this person's history is updated in the database. For example, at Col. 8, beginning at line 55, *Ogasawara* indicates that, when a customer "desires to purchase an item," that the customer would scan an item's UPC bar code into the system. All that happens, however, is that the

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store's central computer will provide the price information or location information to that user as a result of such transfer. There is no disclosure that sets forth that this information will be transmitted to the core server and put into a shopping cart for that individual such that ownership is transferred to the user. If such were disclosed, there would have to be some disclosure of payment method. Such disclosure does not exist within *Ogasawara*. As such, Applicant believes that *Ogasawara*, due to the fact that there is no disclosure as to actually effecting completion of a commercial transaction with the bar code and terminal ID information transferred from the portable terminal, fails to anticipate Claims 12-22 or Claims 1-11. As such, Applicant respectfully requests the withdrawal of the 35 U.S.C. §102(e) rejection with respect to Claims 1-22. This is with respect to *Ogasawara*.

Claims 12-22 and Claims 1-11 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Ogasawara*. As noted herein above, *Ogasawara* discloses no way to complete a commercial transaction and transfer ownership of a product to a user. There must be some type of payment in order for such to happen. Further, even if one were to assume that the system could make such a transaction, it would not be in response to the transfer of the MRC from the portable terminal. In order for a commercial transaction to be complete, the user would typically have to provide some credit card information or some access to a credit card location to automatically debit that location. Applicant does not see any such indication or suggestion in *Ogasawara* for such to happen. Rather, all that *Ogasawara* does is to record a history of purchases as opposed to completing that purchase by debiting the user's credit card account or bank account. Certainly, for a purchase to occur, that must happen at a later time but it is not in response to transfer of the MRC to the retail processing system. Thus, Applicant believes that, without some suggestion or motivation, one of ordinary skill in the art would not have modified *Ogasawara* to perform the claimed function of completing the transaction. Therefore, Applicant respectfully requests the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 1-11 and 12-22 in view of *Ogasawara*.

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Claims 1-5 and 12-16 have been alternatively rejected under 35 U.S.C. §102(e) as being clearly anticipated by *Barnett*. This rejection is respectfully traversed. As set forth herein before, Applicant is of the position that *Barnett* does not disclose the concept of obtaining the information in an MRC with an extraction device and transferring "from the extraction device" to a receiving system at a retail processing system this MRC information in conjunction with unique identification information. This transferred information "from the extraction device" is then utilized by the retail processing system to complete a transaction. Applicant notes that certainly an MRC is utilized to transfer information to a POS and that would be used to complete a transaction, but there is no disclosure in *Barnett* that such would occur with an extraction device that would have unique user information contained therein and which was transferred from the extraction device to the POS. Applicant does admit that a scanner would scan a code and transfer that code to a POS system which would then complete the transaction. However, this scanner does not associate that scanning operation with unique information to identify the user which is transferred with the MRC to the retail processing system. As such, Applicant respectfully requests the withdrawal of the 35 U.S.C. §102(e) rejection with respect to Claims 1-5 and 12-16 in view of *Barnett*.

With respect to paragraph 15, the Examiner has again confirmed that Applicant has decided not to be his own lexicographer by indicating and defining claim limitations to meanings other than the ordinary and accustomed meanings. The Examiner refers to the fact that this is due to the fact that Applicant has not pointed to any term or terms in the claims from which to draw in any limiting statements. Applicant has discussed this with the Examiner in detail.

In his response to the Examiner's comments in this conversation, the Examiner and Applicant discussed the provisions of MPEP 2111 which requires the claims to be interpreted with their broadest reasonable interpretation. The Patent Office rules require that the pending claims must be "given their broadest reasonable interpretation consistent with the specification." However, this section further requires that the claims must also be consistent with the interpretation that those skilled in the art would reach. In section MPEP 2111.01, the Patent

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Office sets forth that claims must be given their "plain meaning" unless they are defined in the specification differently. In this section, it is set forth that "the specification must be reviewed to determine 'whether the presumption of ordinary and customary meaning is rebutted.'", citing *Texas Digital*, 308 F.3d at 1204. As such, Applicant agrees that if the specification were to set forth an explicit definition for a term such that that explicit definition will control interpretation of the term as it is used in the claim, this definition would rule. Further, the Patent Office sets forth in MPEP 2111.01(III) that any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention," citing *Multiform Desiccants, Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477.

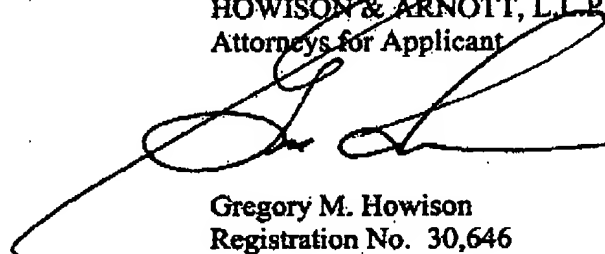
In view of the above, Applicant believes that the Examiner is correct in using the ordinary meaning or the plain meaning of a term, read in light of the specification for the purpose of prosecuting the case. However, Applicant also takes the position that reading the claim with the broadest possible interpretation will not prevent a later finding that the term may be more narrowly defined by a close evaluation of the specification in a subsequent litigation, should such claim be the subject matter of such litigation. For the purpose of prosecution and only for that purpose, Applicant believes that the Examiner is correct in accordance with the guidelines of the Patent Office to view the claim with the plain meaning provisions set forth in MPEP 2111. Hopefully, the position between the Examiner and Applicant may be clearer, although they may still disagree. Hopefully, the other aspects with respect to the rejections in view of the art will go forward.

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Applicant has now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicant respectfully requests full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-25,357 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,
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PTO/SB/30 (09-04)

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Request for Continued Examination (RCE) Transmittal

Address to:
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	09/597,131
Filing Date	June 20, 2000
First Named Inventor	Philyaw
Art Unit	3627
Examiner Name	ANDREW J. FISCHER
Attorney Docket Number	PHLY-25,357

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This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

ii. ☐ Other _____

b. ☒ Enclosed

i. ☒ Amendment/Reply

iii. ☐ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s) Declaration(s)

iv. ☐ Other _____

2. Miscellaneous

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b. ☐ Other _____

3. Fees

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, or credit any overpayments, to

a. ☒ Deposit Account No. _____. I have enclosed a duplicate copy of this sheet.

i. ☒ RCE fee required under 37 CFR 1.17(e)

ii. ☒ Extension of time fee (37 CFR 1.136 and 1.17)

iii. ☐ Other _____

b. ☐ Check in the amount of \$ _____ enclosed

c. ☒ Payment by credit card (Form PTO-8038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2025.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature		Date	9/18/05
Name (Print/Type)	Gregory M. Howison	Registration No.	30,648

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Signature		Date	9/18/05
Name (Print/Type)	Gregory M. Howison		

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application forms to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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